

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 18, 2007

STATE OF TENNESSEE v. GREGORY N. BOYKIN

**Appeal as of Right from the Circuit Court for Rutherford County
No. 55870 James K. Clayton, Jr. Judge**

No. M2006-01777-CCA-R3-CD - Filed June 26, 2007

A Rutherford County jury convicted the Defendant, Gregory N. Boykin, of filing a false police report, theft under five hundred dollars, and vandalism under five hundred dollars. On appeal, he alleges that: (1) the evidence was insufficient to sustain his conviction for filing a false police report; and (2) that the trial court improperly admitted evidence of the Defendant's prior convictions. Because we conclude that no error exists, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Gerald L. Melton, District Public Defender; Russell N. Perkins, Assistant Public Defender, Murfreesboro, Tennessee for the Appellant, Gregory N. Boykin.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel W. Harmon, Assistant Attorney General; William Whitesell, District Attorney General; Trevor H. Lynch, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Defendant's convictions for filing a false police report, theft under five hundred dollars, and vandalism under five hundred dollars. At his trial on these charges, the following evidence was presented:

On April 15, 2004, Murfreesboro Police Officer Meeks responded to a dispatch call reporting a burglary that had occurred. The complainant was the Defendant, and when Officer Meeks arrived at the crime scene, the Defendant told him that his boss, Joe Liggett, owned the property and that the Defendant did repair work on the property. The Defendant told Officer Meeks that, on April 14, 2004, he left work around 4:00 p.m., that nothing was missing from the property,

and that he returned at approximately 2:30 a.m. and found that a few doors had been pried open and that tools were missing from the property. The Defendant told Officer Meeks that the missing property belonged to Joe Liggett. The Defendant told Officer Meeks that, earlier that day, individuals came to the property and discussed doing some roof repairs with the Defendant. The Defendant advised Officer Meeks that the individuals who came to Liggett's residence the day before should be potential suspects as the perpetrators of the burglary.

Officer Meeks called for a detective, filled out an incident report, and the Defendant signed the report. The report listed property that the Defendant had reported missing, including a miter saw. Officer Meeks wrote down this information and a narrative statement describing the burglary, and the Defendant signed the statement, which stated that all information was true and correct to the best of his knowledge and under the penalty of law. Officer Meeks reviewed and discussed the incident report with the Defendant before the Defendant signed the report.

Bonnie Andrews testified that while her friend, Eddie Freeman, was visiting her the Defendant came to her house with a miter saw and some tools that he wanted to sell. The Defendant said that he got the saw from some of his friends. Neither Andrews or Freeman wanted to purchase the saw. The Defendant asked Freeman if he knew where the Defendant could sell the saw, Freeman called a man named Alford Sellers, and then the Defendant and Freeman left Andrews' home. When Freeman and the Defendant returned they told Andrews that they had sold the miter saw for seventy-five dollars. Andrews later spoke with Liggett who told her that someone had stolen tools from him. She told Liggett that, a few days earlier, the Defendant had come to her house with a miter saw. The Murfreesboro Police Department contacted Andrews, and she provided a statement. Andrews contacted the person that had purchased the saw and had that person bring the saw back to her house. The police then recovered the saw.

Joseph Liggett testified that he owned the property where the burglary had occurred and that he planned to enhance and then resell this property. He employed the Defendant to help with the renovations. Liggett provided the Defendant with a key to work at the property but did not give the Defendant permission to take tools from the property or to give them to another individual. On April 15th, Liggett called the Defendant and the Defendant told Liggett that someone had broken into and stolen some tools from the property. Liggett went to the property and discovered that the garage door and the back door had broken frames. He noted that several tools were missing but that other valuable tools remained on the property.

Liggett testified that he spoke with Andrews, and she told him the Defendant had come to her residence, attempted to sell her a saw, but eventually sold the saw to someone else. Liggett then spoke with Freeman, and provided Freeman with money to purchase the saw from the individual who purchased the saw from Freeman and the Defendant a few days earlier. Freeman purchased the saw and Detective Wyatt retrieved the saw from Freeman. Liggett identified a photograph of this saw. He knew that this saw belonged to him because he had glued a new adjustment knob on the saw, and he had never seen another saw with such an adjustment knob.

Detective Jim Wyatt testified that he responded to a call reporting a burglary and described how he investigated and photographed the crime scene. He photographed the home's interior, the garage, and the doors that had been damaged, and these photographs were entered into evidence. Detective Wyatt observed that someone had pried open the back door and a door leading from the kitchen to the garage with a screwdriver or a similar tool. Detective Wyatt wondered why someone would pry open the garage door if they had already entered the house through the back door. Detective Wyatt noted that the intruder would have had to have walked through wet grass to get to the back door, and he looked for tracks of dew throughout the residence but didn't find any tracks. Detective Wyatt also wondered why certain tools, which were similar in nature and value to the tools reported as stolen, remained at the property.

Detective Wyatt testified that he contacted Liggett to discuss the burglary. Detective Wyatt then described how Andrews and Freeman helped him recover the miter saw that the Defendant and Freeman had sold to Sellers. When Detective Wyatt recovered the saw, he also obtained a receipt that Sellers had received when he purchased the saw. The receipt contained the following language: "I sold Alford Sellers a Bosch 3912, looks like, S.N. 90613-030265 miter saw. Name: Greg Boykin. Date: 4-14-04." Liggett came to the police department and identified the saw as the one that had been taken from his property. He recognized the saw because it had a unique handle. Detective Wyatt testified that, before he recovered the miter saw, he and Detective Nobles interviewed the Defendant at the police department and, the Defendant maintained that he had nothing to do with the burglary.

The Defendant testified that he worked as an independent contractor at the property that was burglarized. He said that on April 14, 2004, he left work around 4:30 p.m., returned to his home, and then went to Andrews' home around 7:00 or 7:30 p.m. When he arrived at Andrews' house, she and Freeman were drinking. Freeman seemed tipsy, the Defendant told her that she should not drink in front of her daughter, and Andrews got upset. The Defendant left the residence around 8:00 p.m., returned to the work-site, and worked there for about forty minutes. Andrews called him on the phone, and the Defendant decided to return to her residence. As he was preparing to leave, the Defendant said that he heard someone inside the house and then saw an individual who asked if the property needed roof work. The Defendant told this person that the roof had already been shingled, and the individual looked around the room and then left the premises.

The Defendant testified that he returned to Andrews' house around 8:45 p.m. and received a phone call from Charles Watts around 9:30 or 9:45 p.m. Watts wanted the Defendant to sell some tools, the Defendant left to help Watts sell the items, and he told Freeman to look for other potential buyers. The Defendant testified that Freeman called Sellers before the Defendant left Andrews' home. The Defendant met Watts at the Murfreesboro Motel, and Watts introduced the Defendant to a man named Miguel. Miguel showed the Defendant some tools in the back of a pickup truck and asked if the Defendant could sell these items. The Defendant then went to the 41 Club to sell the tools but was unable to find a buyer. The Defendant then returned to the Murfreesboro Motel, and told Watts that he could not sell the saw but would check with Freeman to see if he had contacted a different buyer. He used a pay phone to call Freeman, and Freeman told him that Sellers would

purchase the tool.

The Defendant testified that he then returned to Andrews' home with the saw and picked up Freeman. Freeman and the Defendant left Andrews' home and sold the saw to Sellers. The Defendant provided Sellers with a receipt for the saw. The Defendant dropped Freeman off at Andrews' home and returned to the Murfreesboro Motel with the money he had received and gave the money to Watts. The Defendant then went to Andrews' home and she asked him for money. He refused to give Andrews money, and she got mad. She asked the Defendant what happened to the money he had just received, and he told her that he gave that money to Watts.

The Defendant testified that he drove to his home that he shared with his aunt and mother, decided that he did not want to wake them, and then drove to Liggett's property where he planned to sleep. When the Defendant entered the property, he noticed that the back door was open and that the door leading into the garage was open slightly. He looked in the garage and saw that the door exiting the garage was open about six inches. The Defendant noticed that a few items were missing and called 9-1-1 to report the burglary. Officer Meeks arrived, and the Defendant took him inside, showed him what had happened, and told him about the missing items. He told Officer Meeks to call Liggett to ensure that Liggett did not have any of the missing items. Detective Wyatt arrived at the property, the three men discussed the crime, and then everyone left. The next morning the Defendant spoke with Liggett and determined that Liggett did not have the missing items.

The Defendant testified that, when he spoke with Detective Wyatt at the police station, he told Detective Wyatt that he had nothing to do with the burglary that had occurred at the Liggett's property. He did not tell the officers about the miter saw that he sold to Sellers because Watts told him that the saw belonged to Miguel, and the Defendant trusted his friend. The Defendant alleged that all the information he gave to Officer Meeks to put in the police report was true. The Defendant denied taking tools from the property and damaging the property.

Based upon this evidence, the jury convicted the Defendant of filing a false police report, theft under five hundred dollars, and vandalism under five hundred dollars.

II. Analysis

On appeal, the Defendant alleges that: (1) the evidence was insufficient to sustain his conviction for filing a false police report; and (2) the trial court erred when it allowed the State to question the Defendant about his prior convictions.

A. Sufficiency of the Evidence

On appeal, the Defendant asserts that there was insufficient evidence to support his conviction for filing a false police report. When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319 (1979); see Tenn. R. App. P. 13(e); State v. Goodwin, 143 S.W.3d 771, 775 (Tenn. 2004) (citing State v. Reid, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Pendergrass, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. State v. Buggs, 995 S.W.2d 102, 105 (Tenn. 1999); Liakas v. State, 286 S.W.2d 856, 859 (Tenn. 1956). “Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact.” State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997); Liakas, 286 S.W.2d at 859. “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978); State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing Carroll v. State, 370 S.W.2d 523 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. Goodwin, 143 S.W.3d at 775 (citing State v. Smith, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000).

The defendant was charged with violation of Tennessee Code Annotated section 39-16-502(a)(2), which provides as follows:

(a) It is unlawful for any person to:

(2) Make a report or statement in response to a legitimate inquiry by a law enforcement officer concerning a material fact about an offense or incident within the officer’s concern, knowing that such report or statement is false and with the intent to obstruct or hinder the officer from:

(A) Preventing the offense or incident from occurring or continuing to occur; or

(B) Apprehending or locating another person suspected of committing an offense.

The evidence presented at trial showed that the Defendant willfully and knowingly caused a false police report to be filed. The record established that the Defendant initiated contact with Officer Meeks¹ and then provided Officer Meeks with false information when he alleged that others had broken into Liggett's property and had stolen various tools. The jury obviously accredited this evidence notwithstanding the Defendant's claim that he received the saw that he sold to Sellers from Miguel and that everything he stated in the police report is true. The jury was entitled to accept the State's evidence that the Defendant's statements to Officer Meeks were knowingly false. Therefore, the Defendant is not entitled to relief on this issue.

B. Prior Convictions

The Defendant contends that the trial court erred when it allowed the State to use for impeachment purposes the Defendant's prior convictions for attempt to alter a license tag and for theft under five-hundred dollars. The State contends that the trial court properly allowed the Defendant's prior convictions into evidence for impeachment purposes.

Tennessee Rule of Evidence 609(a) provides that a witness may be impeached by evidence of a prior conviction. However, the prior conviction must be a felony conviction or a conviction of an offense involving dishonesty or a false statement. Tenn. R. Evid. 609(a)(2). Upon request, the trial court must determine that the conviction's probative value on credibility outweighs its unfair prejudicial effect on the substantive issues. Id. The rule also mandates that the State give reasonable written notice prior to trial of the particular convictions it intends to use to impeach the accused. Tenn. R. Evid. 609(a)(3). The Tennessee Supreme Court has noted that the following two criteria are especially relevant in balancing a prior conviction's probative value and unfair prejudicial effect: (1) the impeaching conviction's relevance as to credibility; and (2) the impeaching conviction's similarity to the charged offense. State v. Waller, 118 S.W.3d 368, 371 (Tenn. 2003). A trial court should first analyze the relevance that the impeaching conviction has to the issue of credibility. Id. The trial court should then assess the similarity between the crime on trial and the crime underlying the conviction. Id. at 373.

When an impeaching conviction is substantially similar to the charged offense, a danger exists that jurors will improperly consider the impeaching conviction as evidence of the propensity of the defendant to commit the crime. Id. Accordingly, the unfair prejudicial effect of an impeaching conviction on the substantive issues greatly increases if the conviction is substantially similar to the charged offense. Id. Under these circumstances, a trial court should carefully balance the impeaching conviction's relevance with regard to credibility against its unfair prejudicial effect on substantive issues. Id.

¹ The Defendant's citation to State v. Levandowski, 955 S.W.2d 603, 605 (Tenn. 1997) which held that T.C.A. 39-16-502 does not apply to statements made in response to inquiries made by law enforcement officers is inapplicable to the case under submission because the Defendant initiated contact with the police.

However, evidence of a prior conviction that is substantially similar to the charged offense is not per se inadmissible for impeachment purposes. *Id.* “The standard is not whether there is any prejudice by allowing the State to use the prior conviction for impeachment, but whether the possible prejudice is outweighed by the probative value of the evidence as to the defendant’s credibility as a witness.” *State v. Roberts*, 943 S.W.2d 403, 408 (Tenn. Crim. App. 1996), *overruled on other grounds by State v. Ralph*, 6 S.W.3d 251 (Tenn. 1999). The courts of this State have repeatedly held that robbery and theft are crimes of dishonesty, “thus lending greater weight to their probative value regarding credibility.” *State v. Lamario Sumner*, No. W2005-00122-CCA R3-CD, 2006 WL 44377, at *5 (Tenn. Crim. App., at Jackson, Jan. 6, 2006) (quoting *State v. Blevins*, 968 S.W.2d 888, 893 (Tenn. Crim. App. 1997)), *perm. app. denied* (Tenn. May 30, 2006). On appellate review, the trial court’s rulings on the admissibility of prior convictions for impeachment purposes are subject to reversal only for an abuse of discretion. *State v. Thompson*, 36 S.W.3d 102, 110 (Tenn. Crim. App. 2000). A trial court abuses its discretion only when it applies an incorrect legal standard or reaches a decision which stands against logic or reasoning that causes an injustice to the complaining party. *Waller*, 118 S.W.3d at 371.

In the present case, the State properly filed written notice before the trial of its intent to question the Defendant about his prior convictions. Before the Defendant testified, a jury-out hearing was held to determine whether the Defendant’s prior conviction for attempt to alter a license tag and theft under five hundred dollars would be admissible to impeach the Defendant’s testimony. The Defendant argued that the State should not be allowed to cross-examine him regarding his prior convictions for an attempt to alter a license tag and for theft. He argued that the attempt conviction had no bearing on his credibility and that his theft conviction was inadmissible due to its similarity to the crime in question. He contended that the probative value of his former theft conviction was substantially outweighed by the danger of unfair prejudice. The State argued that both crimes were admissible for impeachment purposes as crimes of dishonesty, relevant in determining the Defendant’s credibility. The trial court held that the Defendant’s credibility was at issue in this case and that his prior convictions were admissible as crimes of dishonesty.

The trial court made the following statements in regards to the admissibility of the Defendant’s prior convictions:

I know there is heightened scrutiny. But in this particular instance, the only proof that we have that would be able to be brought before the jury in this instance is two Class A misdemeanors

And they are specifically set out as being crimes of dishonesty. Theft and of course attempted altering of a tag

But for what it’s worth, I think it’s the only proof that the State has that bears on his credibility, and for that reason it is admissible.

In the case under submission, the trial court did not abuse its discretion by ruling that the

Defendant's prior convictions were admissible. The trial court determined, and we agree, that the Defendant's credibility was a key issue. The Defendant denied the accusations against him and presented an alternative theory as to why he sold Liggett's miter saw to another individual before the Defendant reported the burglary to the police. As previously stated, theft is considered a crime of dishonesty and therefore highly probative as to the Defendant's credibility. In our view, an attempt to alter a license tag is also a crime of dishonesty because the perpetrator of such a crime intends to mislead others. Therefore, we conclude that both of the Defendant's prior convictions were highly probative as to the Defendant's credibility, and the probative value of the testimony was not outweighed by the unfair prejudice.

Although, as the State acknowledges, the trial court did not make a specific finding that the probative value of the convictions was not outweighed by unfair prejudice, we believe that such a finding can be reasonably inferred after carefully reading the entire record pertaining to this issue. This Court will not reverse the trial court's rulings on the admissibility of prior convictions for impeachment purposes unless the trial court abuses its discretion. Furthermore, any error in the trial court's ruling is not grounds for reversal unless the error "affirmatively appears to have affected the result of the trial on the merits." Tenn. R. Crim. P. 52(a). Even if the trial court erred by ruling that the Defendant's prior convictions were admissible, such error was harmless in light of the substantial evidence presented against the Defendant at trial. Therefore, the Defendant is not entitled to relief on this issue.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we affirm the judgments of the trial court.

ROBERT W. WEDEMEYER, JUDGE